FILED
DISTRICT COURT OF GUAM

MAR 29 2004

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

SENTENCE BY A PERSON IN FEDERAL CUSTODY MARY L. M. MORA				
United States District Court	District GUAM	W- 04-0001	" 7	
Name of Movant REXIELITO J. GLORY	Prisoner No. 02179-093	Case No. CR 01-00061	1	
Place of Confinement FEDERAL DETENTION FACILITY, HAGATNA, GUAM			7	
UNITED STATES OF AMERICA		XIELITO J. GLORY ame under which convicted)		
MO	OTION			
1. Name and location of court which entered the judgment HAGATNA, GUAM	of conviction under atta	ck DISTRICT COURT OF GUAM,		
2. Date of judgment of conviction DEC. 19, 2001.				
3. Length of sentence 262 MONTHS			_	
4. Nature of offense involved (all counts) COUNTS I. I	. AND III: CONSP	IRACY TO IMPORT METHAMPHE	– T	
AMINE, COUNT IV: IMPORTATION OF METHAM			-	
PHETAMINE.			Ξ.	
		<u> </u>	-	
5. What was your plea? (Check one) (a) Not guilty (b) Guilty (c) Nolo contendere If you entered a guilty plea to one count or indictment, and COUNTS I, II, III, AND IV: DISMISSED. C			-	
 6. If you pleaded not guilty, what kind of trial did you have (a) Jury □ (b) Judge only □ 	? (Check one)			
7. Did you testify at the trial? Yes □ No □				
8. Did you appeal from the judgment of conviction? Yes ☑ No □ AND FOR REVIEW OF MY OTHERWIS	E FINAL SENTENCE.			

9. If you did appeal, answer the following:	
(a) Name of court UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.	
(b) Result AFFIRMED BUT NINTH CIRCUIT COMMENTED THAT "INEFFECTIVE ASSISTANCE O COUNSEL IS MORE PROPERLY RAISED ON COLLATERAL ATTACK UNDER 28 U.S.C. § 2 (c) Date of result JAN. 17. 2003	F 255.'
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any perapplications or motions with respect to this judgment in any federal court? Yes □ No ☑	etitions
11. If your answer to 10 was "yes," give the following information:	
(a) (1) Name of court	· ·········· .
(2) Nature of proceeding	
(3) Grounds raised	
(4) Did you receive an evidentiary hearing on your petition, application or motion?	
Yes \square No \square	
(5) Result	
(6) Date of result	
(b) As to any second petition, application or motion give the same information:	
(1) Name of court	
(2) Nature of proceeding	
(3) Grounds raised	
	· — · · · · · · · · · · · · · · · · · ·

(6) Date of result (6) Date of result (7) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition application or motion? (8) First petition, etc. Yes □ No □ (9) Second petition, etc. Yes □ No □ (10) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not not appeal from the adverse action on any petition, application or motion, explain briefly why you did not reaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attact pages stating additional grounds and facts supporting same. CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date. For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you based your allegations that you are being held in custody unlawfully. Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any now one of the grounds. (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.	(4)	Did you receive an evidentiary hearing on your petition, application or motion? Yes □ No □
(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition application or motion? (f) First petition, etc. Yes □ No □ (g) Second petition, etc. Yes □ No □ (d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not with you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not not ground to the petition of the constitution, laws of treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attack pages stating additional grounds and facts supporting same. CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date. For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have your allegations that you are being held in custody unlawfully. Do not check any of these listed grounds. If you select one or more of the grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds or with understrainties of (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understrainties of (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understrainties of (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understrainties of the process	(5)	Result
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second of the charge and the conseniences of the bias	(a) Conv	to be returned to you it you merely check (a) through (j) or any one of the grounds.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (i) Denial of right of appeal.

٨.	Ground one: MY SENTENCE WAS IMPOSED IN VIOLATION OF LAW.
	Supporting FACTS (state briefly without citing cases or law) SEE PARAGRAPHS 1 AND 3 OF THE ATTACHED PAGES.
	Ground two: MY SENTENCE WAS IMPOSED AS A RESULT OF AN INCORRECT APPLICATION OF THE SENTENCING GUIDELINES.
	Supporting FACTS (state briefly without citing cases or law): SEE PARAGRAPHS 1 AND 3 OF THESE ATTACHED PAGES.
	*
	Ground three: DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL.
	Supporting FACTS (state briefly without citing cases or law): SEE PARAGRAPHS 2, 4, AND 5 OF THESE ATTACHED PAGES.

D.	Ground four:
	Supporting FACTS (state briefly without citing cases or law):
PAGES.	
TAGES:	
. Do you hav	ve any petition or appeal now pending in any court as to the judgment under attack?
. Do you hav	
Do you have Yes \(\subseteq \text{No} \) Give the natherein: (a) At preference of the preference of	me and address, if known, of each attorney who represented you in the following stages of the judgment attac
Do you have Yes \(\subseteq \text{No} \) Give the natherein: (a) At preference the preference of the	me and address, if known, of each attorney who represented you in the following stages of the judgment attac
Do you have Yes \(\sum \) No Give the name therein: (a) At present the prese	me and address, if known, of each attorney who represented you in the following stages of the judgment attac

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505	
(e) On appeal ROBERT E. H.	ARTSOCK, ESQ., FEDERAL PUBLIC DEFENDER, DISTRICT OF GUAM,
	K BUILDING, 400 ROUTE 8, SUITE 310, MONGMONG, GUAM 96910
(f) In any post-conviction proc	ceeding
,,	
(g) On appeal from any adve	rse ruling in a post-conviction proceeding
6. Were you sentenced on more that approximately the same time? Yes □ Nox	an one count of an indictment, or on more than one indictment, in the same court and
	* *
. Do you have any future sentenc Yes □ No 〒	e to serve after you complete the sentence imposed by the judgment under attack?
(a) If so, give name and location	n of court which imposed sentence to be served in the future:
(b) Give date and length of the	above sentence:
to Office date and feligin (. the	acove sentence.
(c) Have you filed, or do you cor served in the future? Yes □ No □	ntemplate filing, any petition attacking the judgment which imposed the sentence to be
· · · · · · · · · · · · · · · · · · ·	_
wherefore, movant prays that the (Court grant him all relief to which he may be entitled in this proceeding.
*	
	/ LUUR MAANA
	Signature of Attorney (if any)
	HOWARD TRAPP
declare under penalty of perjury	that the foregoing is true and correct. Executed on
Mar. 26, 2004	
(date)	•
	Signature of Movant REXIELITO J. GLORY

ATTACHED PAGES

- 1. Paragraph 44 of the presentence report states, "The offense involved the importation of methamphetamine and the defendant is not subject to an adjustment under § 3B1.2 (Mitigating Role). Therefore, the offense level is increased by two levels pursuant to U.S.S.G. § 2D1.1(b)(4)(A) and (B)." The offense, however, did not involve the *importation* of methamphetamine. Rather, I was convicted of distribution of methamphetamine.
- 2. Neither of the attorneys who represented me at sentencing objected to the application of U.S.S.G. § 2D1.1(b)(4). To the contrary, the attorneys who represented me at sentencing stated they had no objection to the application of U.S.S.G. § 2D1.1(b)(4).
- 3. Paragraph 46 of the presentence report states, "The defendant was an organizer, leader, manager, or supervisor in the criminal activity. Therefore, the offense level is increased by two levels pursuant to U.S.S.G. § 3B1.1(c)." I was not, however, an organizer, leader, manager, or supervisor in any criminal activity. I never organized, led, managed, or supervised any person who was in any way criminally responsible for the offense of which I was convicted.
- 4. Neither of the attorneys who represented me at sentencing objected to the application of U.S.S.G. § 3B1.1. To the contrary, the attorneys who

represented me at sentencing stated they had no objection to the application of U.S.S.G. § 3B1.1.

- of the following: that the application of U.S.S.G. § 2D1.1(b)(4) was imposed in violation of law; that the application of U.S.S.G. § 2D1.1(b)(4) was imposed as a result of an incorrect application of the sentencing guidelines; that I was denied effective assistance of counsel, because neither of the attorneys who represented me at sentencing objected to the application of U.S.S.G. § 2D1.1(b)(4); or that I was denied effective assistance of counsel, because the attorneys who represented me at sentencing stated they had no objection to the application of U.S.S.G. § 2D1.1(b)(4).
- 6. The grounds listed in paragraphs 1 and 2 of these attached pages were not previously presented for the reasons set forth in paragraphs 2 and 5 of these attached pages.
- 7. The grounds listed in paragraph 5 of these attached pages were not previously presented for the reason that this collateral attack under 28 U.S.C. § 2255 is my first opportunity to do so.

DECLARATION OF SERVICE

I, Maria D. Ramon, declare that I am a secretary employed in the office of Howard Trapp Incorporated, Howard Trapp, Esq., the attorney for defendant herein, and that on March 29, 2004, I served the document to which this declaration is annexed on Karon V. Johnson, Esq., Assistant United States Attorney, the attorney for plaintiff herein, by leaving a copy thereof at her office at Suite 500, Sirena Plaza, 108 Hernan Cortez Avenue, Hagåtña, Guam, Ms. Johnson's last known address, with a person in charge thereof.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 29, 2004, at Hagåtña, Guam.

MARIA D. RAMON